

ANDERSON EXHIBIT 3

Lockwood, M.D., John M. - 30(b)(6)

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1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS
3 IN RE: PHARMACEUTICAL)
4 INDUSTRY AVERAGE WHOLESALE) MDL NO. 1456
5 PRICE LITIGATION) CIVIL ACTION:
6 THIS DOCUMENT RELATES TO) 01-CV-12257-PBS
7 U.S. ex rel. Ven-A-Care of) Judge Patti B. Saris
8 the Florida Keys, Inc. v.)
9 Abbott Laboratories Inc.,) Chief Magistrate Judge
10 No. 07-CV-11618-PBS) Marianne B. Bowler

11

12 VIDEOTAPED 30(b)(6) DEPOSITION OF
13 JOHN M. LOCKWOOD, M.D.

14 Volume I

15 (Taken by Defendant Abbott Laboratories Inc.)
16 April 23, 2009

17 9:27 a.m.

18 Suite 800

19 1420 Peachtree Street, N.E.

20 Atlanta, Georgia

21 Reported by: F. Renee Finkley, RPR, CRR, CLR,

22 CCR-B-2289

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5 A. Yes.

6 Q. And are you prepared to testify on
7 Ven-A-Care's behalf about these topics?

8 A. I believe I am, although I think there
9 were some objections about some of the topics,
10 et cetera, but generally, yes.

11 Q. And during this deposition, when I say
12 you, I may be referring to -- I will be referring to
13 Ven-A-Care unless I indicate that I'm asking you
14 personally. So those answers will be on behalf of
15 Ven-A-Care. Is that -- you understand that?

16 A. Yes.

17 Q. And you please tell me if you're not able
18 to answer on Ven-A-Care's behalf when I ask you a
19 question. Is that fine?

20 A. Okay.

21 Q. Why did Ven-A-Care choose you to testify
22 as the representative to this notice?

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1 MR. BREEN: I'm going to just deposit a
2 technical objection. To the extent that this
3 requires that the witness reveal communications
4 with counsel that are subject to the
5 attorney/client privilege, I would instruct him
6 not to answer, but to let us know if he feels
7 there's an area he cannot respond completely on
8 because of that.

9 Aside from that, I think he can give you
10 an answer to the question, cause it's a
11 practical answer as opposed to a lot of
12 legalisms that went into it.

13 THE WITNESS: I think we decided that I
14 might be most knowledgeable on the Ery topic.

15 Q. (By Mr. Berlin) And why is that? Why
16 would you be more knowledgeable than Mr. Jones or
17 Mr. Cobo or Mr. Bentley about these issues?

18 A. Because I spent a lot of time working and
19 developing the concepts and ideas that went into the
20 Ery case.

21 Q. How did it come to be that you were the
22 one who spent the time working and developing on the

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1 concepts for the Ery case?

2 A. I think I just took it on as a project for
3 myself.

4 Q. And let's just be clear about one thing.
5 You and I during the course of this deposition will
6 sometimes refer to the Erythromycin drugs as Ery, and
7 that's clear, right?

8 A. That would be fine, yes.

9 Q. When did you --

10 A. Well, to the extent we're talking about
11 the oral Erythromycins for this case.

12 Q. Yes. Yes. That's correct. And again,
13 that -- this case -- might as well, while we're on
14 the subject, mark the -- I'm going to mark a copy of
15 the complaint and its exhibits as Exhibit 2 for this
16 deposition.

17 (Exhibit Lockwood Ery 002 was
18 marked for identification.)

19 Q. (By Mr. Berlin) Here you go,
20 Dr. Lockwood. What I've handed you is Exhibit 2,
21 which is a copy of the complaint in this case and the

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00012 exhibits to the complaint. Just so we're clear about

1 the -- and I'm going to get to the complaint in more
2 detail later, but just as a preliminary issue, when
3 we refer to Ery or the Erythromycins at issue in the
4 case, those are the NDCs that are listed in paragraph
5 33; is that correct?

6 A. Yes.

7 Q. And going back to your previous answer
8 about why you're testifying here today, you said that
9 you took on the job of spending time to work and
10 develop the concepts for this case. When did you
11 first embark upon that task?

12 A. I would say in particular, just to these
13 drugs and this complaint, sometime in 2000.

14 Q. And we'll get to this in much greater
15 detail later, but what led you to look at these
16 particular drugs, the drugs listed in -- at least
17 some of the drugs listed in paragraph 33 in 2000?

18 A. I was looking at some of our pricing data
19 and I noticed a couple of things about these drugs.
20 These were Abbot Pharmaceutical Products Division
21 drugs, PPD drugs. It was known to me that Abbott PPD
22 was primarily a brand company. I knew some of these

00013 drugs are brands and I noticed discrepancies between
1 the prices that we could buy these drugs from the
2 wholesalers and the reported WAC prices; and I
3 noticed that there was generally a relationship, a
4 very consistent relationship between the normal
5 Abbott brand drugs at Pharmaceutical Products
6 Division, they're more typical brands, I guess.

7 There was a very solid repeatable
8 relationship between the wholesale -- the -- I guess
9 I need to say this properly, the wholesale catalog or
10 list price, whatever, the wholesaler's catalog price
11 and the average wholesale price and the catalog
12 wholesaler's price and the reported WAC.

13 A. And for these particular drugs I found
14 those relationships were not the same as the other
15 brand drugs at PPD. And it stuck out -- it stuck out
16 to me when looking at that. And I spent more time
17 looking and understanding why that was the case and
18 what was causing it and understanding that because I
19 quite simply thought that there was perhaps a
20 fraudulent misrepresentations in prices for these
21 drugs.

00014 Q. And did you reach any sort -- any
1 conclusion as to what was causing this discrepancy
2 that you described?

3 A. Well, I think the most common or the -- I
4 guess the thing that stood out most was that when I
5 looked at Abbott's reported wholesale acquisition
6 cost, their WAC price for these drugs, that that
7 price in many circumstances was way above the price
8 that I could buy this drug from McKesson at their --
9 it's termed a lot of different things, they're
10 wholesale catalog list price, their noncontract
11 price, meaning the price that the wholesaler would
12 sell that drug to you without a contract, just a
13 simple relationship, wholesaler/pharmacy
14 relationship, and that I could buy these drugs for

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16 less than what Abbott was reporting that they were
17 selling the drugs to the wholesalers for.

18 And that was not the situation with
19 Abbott's other brand drugs, meaning that the prices
20 that I could buy -- I don't know. Let's take a drug
21 like Biaxin, perhaps, or Depakote. The catalog list
22 price, noncontract price for those drugs was very

00015 1 close to, similar to, or identical to the reported
2 wholesale acquisition cost on those drugs. But for
3 these Ery drugs, that was not the case.

4 And that led me to believe that, number
5 one, the catalog price that I was buying it at, to my
6 understanding in our conversations with McKesson, was
7 slightly above their acquisition cost, 2 to
8 5 percent, in that range. So it led me to believe
9 that McKesson was actually buying the drug for less
10 than what I was buying it for, meaning they were
11 selling it to me with some markup.

12 And -- and I saw that as a big problem,
13 actually, with these drugs and that it looked like
14 WAC fraud to me, meaning that they were -- that
15 Abbott was not honestly reporting their wholesale
16 acquisition cost on these drugs.

17 Q. I'd like just to back up to one thing you
18 said so that we're clear for the jury who might be
19 listening to this videotape. Do you understand that
20 Abbott, prior to 2004, had a Hospital Products
21 Division often referred to as HPD?

22 A. I am aware of that, yes.

00016 1 Q. And that what you refer to as PPD is a
2 separate division that -- that is called the Pharmacy
3 Products Division?

4 A. Yes, Pharmaceutical Products Division, I
5 believe.

6 Q. Right. And when you refer to PPD, you
7 were referring to that division within Abbott that,
8 as you said, is the Pharmaceutical Product Division?

9 A. Yes.

10 Q. And that division sold mainly branded
11 drugs?

12 A. Yes, sir.

13 Q. And when you say branded drugs, that
14 refers to drugs that do not have generic equivalent
15 competition in the marketplace at that time?

16 A. I wouldn't say that's my only definition
17 of that. No, I wouldn't say that. I would say
18 that -- that, in general, branded drugs, that may be
19 a characteristic of a brand drug, but typically they
20 are drugs that have been -- have gone through the FDA
21 process on a -- and obtained an FDA approval and
22 usually an assigned FDA number that is consistent

00017 1 with an innovator-type drug, that they've done --
2 that they've been approved on an NDA, a new drug
3 application, as opposed to a abbreviated new drug
4 application.

5 Q. In 2000 when you were looking at this, did
6 Biaxin have generic equivalents that were competing
7 in the marketplace?

8 A. I don't believe so, no.

9 Q. And did the Ery drugs at issue in this

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9 Ery drugs, but in terms of the greater universe of
10 pharmaceuticals, because we're talking about a front
and backside printout that's four inches deep.

11 You know, I don't know. The Econolink
12 system contained prices on about 25,000
13 pharmaceuticals, ballpark. And I'm assuming the
14 Bergen printouts had at least that many, if not more.
15 I haven't done a count to see exactly how many
16 pharmaceuticals are listed in that.

17 But it was interesting that these were
18 wholesalers who were representing their -- the price
19 that they sold the drug to pharmacies at under a
20 column labeled average wholesale price. And it took
21 me a little while to understand that that was going
22 on because I had assumed that those were the reported

00040 1 wholesale prices, but when we actually started
2 looking at it, for many of the pharmaceuticals, they
3 were not. So they were actually -- what I'm assuming
4 is that wholesaler was saying this is the average
5 price that we sell this drug for at wholesale, I
6 assume. That's -- the column it was listed under was
7 that.

8 Q. So from those documents that you just
9 described, the Gulf Distributor's catalog and the
10 Bergen catalogs, Ven-A-Care was not able to determine
11 the spread between the purchase price available to
12 Ven-A-Care and the reported AWP or reported WAC?

13 A. We would -- to do that comparison, we
14 would have to look at our other pricing sources or
15 the compendium basically, yes.

16 Q. And did -- and just to be clear, it's your
17 testimony that Ven-A-Care did not, in fact, do that
18 prior to 2000?

19 MR. BREEN: Objection, form.

20 THE WITNESS: Not to -- I mean to the best
21 of Ven-A-Care's knowledge at this point in time,
22 we're not aware that we did that, no.

00041 1 MR. BREEN: Just for the record, you mean
2 for the Ery drugs, right?

3 THE WITNESS: For the Ery drugs, yes.

4 MR. BERLIN: Yes.

5 THE WITNESS: Yes, for the Ery drugs.

6 MR. BREEN: I withdraw my objection.

7 Q. (By Mr. Berlin) Did Ven-A-Care have any
8 single document -- so I'm drawing the distinction
9 between taking a document and going off to the
10 compendia and trying to do this process that you
11 described is a -- let me just back up. That process
12 you described is a bit laborious, right?

13 A. It would have been a little bit to -- to
14 look at that. Certainly the electronic software,
15 the -- made that process much easier. There's no
16 question that -- that the electronic catalog made
17 looking at that -- because part of the electronic
18 catalog was an AWP column for the drug.

19 Q. And when was the first time that
20 Ven-A-Care got an electronic catalog of any sort?

21 A. The Econolink system we got, as far as I
22 can determine, it looks like about April of 2000,

00042 1 somewhere in that range.

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2 Q. Prior to April of 2000 or whenever
3 Ven-A-Care got the Econolink system, did it -- did
4 Ven-A-Care have any one document, whether that's a
5 hard copy document or a page on a database, that
6 compared the price at which Ven-A-Care could purchase
7 these Erythromycin drugs, or for any of the
8 Erythromycin drugs, to the reported AWP or the
9 reported WAC to show the spread between those
10 numbers?

11 A. Right now I cannot think of any. If I
12 come up with something in the next day or two, I
13 will -- I'll let you know. I can't think of a single
14 document right now that has that, except for the
15 electronic catalog -- or catalogs actually.

16 Q. So the spread information, the difference
17 between the -- what you've described as the actual
18 price versus the reported AWP was not available to
19 Ven-A-Care until April of 2000 without somewhat of a
20 laborious process of comparing the two?

21 A. I would say that we didn't have that, no.
22 That -- that doesn't mean that others didn't, but I'm

00043 1 not aware that -- I'm not aware at this time that we
2 had that, although, as I said, I -- if I find
3 something, I'll let you know.

4 MR. BERLIN: Why don't we take a break to
5 change the videotape.

6 THE VIDEOGRAPHER: We're off the record at
7 10:26 a.m.

8 (A recess was taken.)

9 THE VIDEOGRAPHER: This is the beginning
10 of tape number two. The time is 10:37 a.m. and
11 we are back on the record.

12 THE WITNESS: The only thing I might add
13 is that we were not an early converter to the
14 electronic catalog and we knew the electronic
15 catalog had -- had been around for a while. And
16 it was really a -- it was an old DOS-based
17 program that was -- had been modified to work in
18 the Windows environment in, you know, that time.
19 So we knew that there had been electronic
20 catalogs around for some time. Exactly how
21 long, I'm not so sure that I know.

22 Q. (By Mr. Berlin) Do you have knowledge as

00044 1 to approximately when the Econolink system became
2 available to other pharmacies?

3 A. I think I'll need to look at that to give
4 you an answer, and I may need to look at the catalogs
5 and other things that we have.

6 Q. Why was Ven-A-Care, as you describe, a
7 late adopter to that?

8 A. We had not been ordering a lot of drugs
9 from McKesson, certainly, and McKesson was -- had
10 been for many years -- I hate to pigeonhole them
11 exactly and say they were a backup wholesaler for us
12 because for certain things, they may have been a
13 primary wholesaler for us at times. But I think they
14 knew that they were not our only source for -- for
15 drug pricing or -- and that even during the time
16 period when Ven-A-Care was seeing lots of patients,
17 they weren't our only primary wholesaler.

18 They were -- I guess you could call them a

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19 backup, but they -- when we needed oral drugs and
20 that sort of thing, we typically would buy from them
21 or Gulf Distributing. Whereas we might have direct
22 contracts with some manufacturers, we might have

00045 purchases from distributors. They're -- I'm just --
1 I don't want to clear -- because I think their
2 position as a wholesaler for us changed over time and
3 literally from day-to-day as to whether if we were
4 looking to buy oral drugs, there may have been
5 periods of time when they -- we were mainly buying
6 from them; but we may not have been buying all of our
7 IV drugs from them. So I -- I hope I'm appropriately
8 characterizing them.

10 MR. BREEN: And actually I don't think
11 that -- I would -- to the extent that you're
12 asking the witness to give a 30(b)(6) answer as
13 to generally Ven-A-Care's purchasing history and
14 habits and what have you over time, I'd object
15 because I don't think it's within the
16 designations. But that said, I'm happy to have
17 Mr. Jones or somebody give a more comprehensive
18 answer, if you would like.

19 MR. BERLIN: That said, I didn't ask him a
20 question which actually led to that answer.

21 MR. BREEN: Well, that may be part of the
22 problem.

00046 1 MR. BERLIN: So you're objecting that he's
2 going -- I didn't ask anything that went to the
3 purchasing history.

4 MR. BREEN: Okay. At any rate, objection.
5 objection, nonresponsive.

6 MR. BERLIN: I understand your point. And
7 that's perfectly fine.

8 MR. BREEN: If you need that information,
9 we're going to have to get it from Mr. Jones.

10 MR. BERLIN: That's fine. It's fine for
11 at least now. Let's see how -- how we go.

12 Q. (By Mr. Berlin) So I'm not asking you to
13 put a specific calendar date for this answer, but
14 approximately when is the earliest that Ven-A-Care
15 learned about the -- about any spread for any of the
16 Erys listed in paragraph 33 in the complaint?

17 A. Well, I think, at least right now to the
18 best of our knowledge, when I looked at this
19 relationship in 2000 -- that doesn't mean that
20 someone didn't see it at some earlier time and it
21 didn't click or occur to them or -- or they
22 understood the significance or fully understood it.

00047 1 But I think right now to the -- you know, to the
2 extent that we can answer that question, I would say
3 2000.

4 Q. And this goes back to what I asked you
5 earlier about, about -- about time and the task list.
6 This wasn't a situation where you knew about this for
7 a few years but you just didn't find the time to
8 develop it; this was the situation where you really
9 first learned about the spread in -- in 2000 on these
10 Ery drugs? Is that your testimony?

11 A. In large degree. We -- you know, we're
12 looking at a wide number of pharmaceuticals, and, you

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13 know, that number is characterized in a number of
14 different ways. Some people say 60,000 NDC numbers.
15 Some people say 100,000 NDC numbers are out in the
16 marketplace on a regular basis being looked at by
17 people. Whatever that number is, a large number of
18 drugs.

Part of our -- my difficulty in this is
19 that we lost invoices in -- I think it's 1999,
20 Hurricane George, as we've testified about this
21 before. The hurricane hit, the roof leaked, and the
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1 ceiling fell down and water poured into an area that
2 had boxes and boxes of those things. And they were
3 sitting in water and ruined, so that my ability to go
4 back and look at those invoices, receipts, all of
5 those things is -- I don't have that ability.

So we're relying on the memory of the
6 people who, you know, worked at Ven-A-Care that time
7 period when Ven-A-Care was ordering lots of drugs or
8 more drugs from McKesson for -- for that information.
10 Did somebody look at it in 1993 or '94 and realize
11 there was something going on? Maybe. I don't have
12 direct knowledge of that right now, but I also --
13 unfortunately for me, I'm missing the paperwork that
14 might help me do that.

Q. But you're not sitting here testifying
16 that someone in Ven-A-Care knew about the spread
17 information but you all sat on it for a year or a
18 number of years and first started actively
19 investigating it in 2000?

A. No, I'm not -- I'm not saying that. I'm
21 also -- I don't know if somebody looked at an invoice
22 and went, huh, gee, I wonder what that is. I

00049 1 don't -- I don't know the answer to that and because
2 of the lack of information. So at least at present,
3 my best answer is the Econolink software led me to
4 see the relationships that we're talking about.

Q. And after you saw the relationships, you
6 brought that to the attention of the other owners of
7 Ven-A-Care?

A. Yes, I did.

Q. And when you brought it to their
10 attention, did they in any way express to you that
11 they had already known about that?

A. Not directly, no.

Q. What do you mean not directly?

A. No, not that I recall. No one jumped up
15 and said, oh, gee, I knew about that spread in 1993
16 or '92 or '91 or whatever. No.

Q. Well, directly or indirectly, did they
18 give you -- was there any indication that the
19 co-owners -- and we've referred to them by name
20 before, that the co-owners had known this prior to
21 you bringing it to their attention?

A. No.

00050 Q. I did want to ask you a few questions
1 about the lost invoices, and I just want to preface
2 this by saying I don't mean to in any way demean the
3 severity of a hurricane or the necessity to keep
4 one's self safe during that. So I don't want you to
5 interpret these questions in that way or casting

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1 recovered or --

2 MR. BERLIN: Is this -- actually can he
3 testify? Can I ask the question and have him
4 testify?

5 MR. BREEN: Yeah, you can do that if you
6 want.

7 MR. BERLIN: Okay.

8 MR. BREEN: But he's just doing it based
9 upon my -- my tally of these things, so --

10 MR. BERLIN: I understand, but still I
11 need the testimony from him rather than you. I
12 know that you and I would have a ball deposing
13 each other, but --

14 MR. BREEN: That's true. One of these
15 days maybe you'll get a chance and I'll get a
16 chance. All right.

17 Q. (By Mr. Berlin) So my question for you,
18 Dr. Lockwood, is how much money has Ven-A-Care
19 received from these settlements in the AWP-related
20 cases net of attorneys fees or costs?

21 A. I don't think I have that number, but we
22 could get that number, I think. The number he gave

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1 me was a number that we have, a recovery number based
2 on Ven-A-Care activities for the government, which is
3 975 million.

4 MR. BREEN: That's not including the NMC
5 case which was another 496 million.

6 THE WITNESS: I reviewed my prior
7 testimony on this, I think it was from December
8 2007, where I estimated that. I thought
9 personally I had somewhere around \$10 million in
10 pre-tax income as a result of the work that I'd
11 done for and with Ven-A-Care and for the states
12 and federal government from sometime in 1995 up
13 through 2007.

14 And we're now at 2009 and we've had some
15 additional recoveries, and I would estimate that
16 that probably brings the number up somewhere
17 around \$12 million in pre-tax dollars is what it
18 looks like to me over --

19 Q. (By Mr. Berlin) For you personally?

20 A. Yes, over what is essentially almost a
21 14-year period of time that I've worked on these
22 cases.

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1 Q. And I know there are some other issues
2 that you're going to look into and we'll just hold
3 off on those for now.

4 A. Yes.

5 MR. BERLIN: Okay. The next document that
6 I'm going to ask the court reporter to mark as
7 an exhibit is Ven-A-Care's Second Amended
8 Answers to Interrogatories, and this, I believe,
9 will be Exhibit 4.

10 (Exhibit Lockwood Ery 004 was
11 marked for identification.)

12 MR. BERLIN: I'm going to be -- and I'm
13 putting this in front of you just for your
14 convenience. I'm going to be referring to
15 interrogatory number six, which asks to identify
16 and provide all facts known to Ven-A-Care and

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3 Q. For example, the last two on this -- on
4 the page that you and I are looking at, 80475.

5 A. Yes, whereas they may have actually
6 resulted in a change in the FUL if the -- if the
7 McKesson cost price was used essentially as a WAC
8 reported number, then there would have been changes.
9 So this is an extremely conservative look at this
10 issue.

11 Q. Does Ven-A-Care have any information as to
12 which manufacturer's NDC was used to calculate the
13 FULs that are -- that you were looking at here?

14 A. My understanding is that information is
15 available from HCFA, that they make that available
16 and have over the years made that available.

17 Q. And you're answering whether it's
18 available. My question for you is did you have that
19 information?

20 A. I think we looked at that information
21 online. Whether -- whether I copied that information
22 from them or not and have it in our files, I'm not

00221 1 aware that I have it. I might have it, but I'm not
2 aware right now that I have it.

3 Q. And you testified before that you were
4 looking at the Redbook for the FUL, but just to be
5 clear, the Redbook doesn't actually list the FUL,
6 does it?

7 A. Yes, it does.

8 Q. Well, can you turn to page 80481 and show
9 me where the FUL is?

10 A. It's blurred on this, but in the first
11 column, far left, under Erythromycin, that blurred
12 thing right there is HCFA, H-C-F-A, and it's the
13 federal upper limit prices, so that Redbook -- you
14 know, these should be better copies, I guess.

15 But the one above it, actually, I think
16 you might actually be able to read it even a little
17 better there, I think. Well, maybe not. That may
18 not be it, but there is a representation of the FUL
19 for these.

20 Q. So -- I'm sorry, Dr. Lockwood, the actual
21 number appearing under the column of AWP, is that the
22 AWP -- do you understand that to be the AWP for those

00222 1 Erythromycins or are those the FULs?

2 A. I believe these are the FULs. It's listed
3 as HCFA. It's the FUL and then the -- the drugs
4 listed under it are essentially the manufacturers and
5 NDC numbers that are considered in that, or at least
6 are listed in Redbook. I really -- I don't know that
7 I should say they're considered in that, but they are
8 drugs that are listed in Redbook. And my
9 understanding is many times HCFA uses the First Data
10 Bank information to determine the manufacturer that
11 will set the FUL.

12 Q. How did Ven-A-Care obtain a copy of
13 Econolink?

14 A. We made a purchase from McKesson in 2000,
15 I think it was in March of 2000. As I recall, we
16 called in the order and the person we talked to
17 offered the electronic catalog to us, because you
18 could place orders electronically instead of having
19 to call someone and have them sit and listen to your

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order.

Q. What was the order that Ven-A-Care placed in March of 2000?

A. I think it was produced. I'm sure it was produced. It was an order for a variety of pharmaceuticals.

Q. And why was Ven-A-Care making that purchase at that time?

A. I think in large part we wanted to prove that we could actually buy the drugs that we were putting in our initial complaint in Boston, I think to prove that we could buy those drugs at the prices that were represented at McKesson, as well as, as I recall, we also purchased the drugs from a distributor A-N-D-A, ANDA, without a contract, and that many of the drugs we purchased from McKesson were purchased without a contract. They were list price purchases.

And we thought that that was validation of our relationship with McKesson which we'd had over the years and showed that we were able to buy at the prices on those invoices. For instance, I think you asked me if we bought the Ery drugs and I'm not -- and I gave you my answer, but I would say that our purchase in 2000 proves that we could buy drugs from

McKesson and/or others and that we could buy them, you know, for the type of prices that were seen on the invoices.

Q. And did you have to do anything in order to get the Econolink or --

A. I -- my recollection was they -- you know, it was something they would offer to you. We were toying with the idea of getting back more in the pharmacy business at that point in time as well. We were -- we had just had a settlement in a lawsuit and we were considering getting back into and opening a store front. And we talked about opening a retail pharmacy as well as IV pharmacy and talked in some detail about how we would do it, and -- and I don't know. We kicked it around for probably almost two years.

Q. And in the end decided not to do that?

A. Well, I guess that would be the short answer, yes. Yes.

Q. Did you have to sign any agreement with McKesson in order to get the Econolink software?

A. I don't think we -- I don't recall us

signing an agreement. I don't think we had one. We had an ongoing relationship with McKesson and I think -- I think they saw the software as their electronic catalog and they were moving away, as I said earlier, from paper catalogs to electronic catalogs or price lists, whatever you want to term that, perhaps electronic price list would be better.

So -- and McKesson had, for most of the time period we dealt with them, been -- and I agonized over this a bit earlier, cause I hate to call them our backup wholesaler, but for periods of time they were and they weren't. So it was readily available.

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14 My understanding is it was a natural
15 progression, and I think I testified earlier that
16 they actually quit producing paper catalog I believe
17 after the 2003 catalog. So you couldn't buy a paper
18 one if you wanted to. If you were going to buy any
19 drugs from McKesson, even on a backup basis, it's my
20 understanding you had to have the electronic price
21 list. And as I said earlier, I think we were a late
22 adopter.

00226

1 Q. And before that, when there were just
2 paper catalogs, could you -- for example, could you
3 go to a trade show and get the McKesson catalog?

4 A. Well, you could talk to the McKesson rep
5 at a trade show and they would send you one,
6 certainly. Yes. I mean, it's -- you had to be --
7 they didn't hand them out to just anybody. You had
8 to be a qualified purchaser and meet the requirements
9 of being a qualified purchaser. And you typically
10 had to give them your information or they had to have
11 your information, your DEA number, phone number,
12 address, who your pharmacist was, those sorts of
13 things. I, you know --

14 Q. Could I have called up -- I mean, I know
15 this calls for a bit of speculation, but based on
16 your understanding of the circumstances and
17 requirements, could I have called up McKesson and
18 gotten a catalog?

19 A. Only if you were willing to represent that
20 you were a licensed pharmacy illegally and send them
21 your false DEA number and -- and misrepresent
22 yourself; otherwise, as I said -- I think I just

00227

1 testified to -- you would have to be a -- I guess I'm
2 looking for the right word, but a qualified
3 purchaser, that you had to be a pharmacy with, you
4 know, an address and all of those things.

5 And the McKesson rep usually came to Key
6 West as I think I recall about once a month,
7 ballpark. They'd walk by our office. They knew we
8 were there and where we were. But no, you as an
9 attorney, if you don't have a pharmacy license and
10 all the other things that go along with that, you
11 could not get the catalog.

12 Q. And at some point you provided a -- I may
13 be confusing programs. I apologize if I am. But did
14 you provide a copy of Econolink to the federal
15 government?

16 A. Yes, sir, we did.

17 Q. When did you do that?

18 A. I may want to recheck the date, but it was
19 either January 18th, 2001 or January 19th, 2001. We
20 were in Boston doing a presentation to them and
21 that's when we gave it to them. Yeah.

00228

22 Q. And did you seek McKesson's permission to
1 do that prior to doing that?

2 A. No, we did not.

3 Q. Had you ever told McKesson that you had
4 provided their Econolink software to someone else?

5 MR. BREEN: Objection, form.

6 THE WITNESS: I don't know if they learned
7 of it. We never called them and told them that